

Application No. 10/512,011

Title: A DEVICE AND A METHOD FOR SAMPLING OF MILK

Response to Office Action dated June 8, 2006

**Remarks**

This application is currently the subject of a restriction requirement imposed by the Office Action of June 8, 2006. While the applicants are required to make at least a provisional election among the groupings of claims identified in the Office Action, and thus applicants' elect Group 1A corresponding to claims 1-27 and 29, this election is made with traverse. For the reasons set forth below, reconsideration is respectfully requested in that unity of invention exists with respect to all of the claims currently of record.

As the Examiner is aware, the unity of invention standard of PCT Rule 13.1 applies in the case of this national phase application, which are different and broader in scope than the restriction and election of species requirements of U.S. practice. See, e.g., MPEP 1893.03(d). The unity of invention standards require consideration as to whether the independent claims share a common special technical feature. Here, the International Preliminary Report on Patentability, PCT/IPEA409 demonstrates that unity of invention exists with respect to all claims of the present application, and that the cited WO 92/15196, even when applied in hindsight, does not render the present claims unpatentable by way of anticipation or obviousness. Applicants respectfully request that due consideration be given to this finding for purposes of the present national phase application, such that consistency of application of the unity of invention standards can be applied.

Here, the present invention provides a device and a method which provide reliable milk samples from individual animals without influences of possible milk residues from previously milked animals. The purpose of the invention is achieved by embodiments which provide a milk

Application No. 10/512,011

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flow emanating from the animal which includes the milk to be tested at a time before a milk sample is to be taken. This achieves a rinsing effect to remove the residues from a previously milked animal. Embodiments of the present invention can achieve this rinsing process in an especially simple and quick manner, without the requirement for inclusion of a cleaning medium. Furthermore, this may be achieved without leaving residues of water or other cleaning media in the passage, which could affect the milk sample.

The referenced WO 92/15196 document shows an apparatus for sampling of milk from a milk line 10. The apparatus comprises a by-pass line connected to the milk line 10. Sampling extracting means, which seems to be a pump and a timer 14, and a sampling valve 16, is arranged in the by-pass line together with a test actuator 18. A milk sample is delivered to the test actuator 18 for a portion of the operation cycle of the sampling extracting means. However, there is no indication in this reference that milk samples are taken only after a specified milk flow has moved through the milk passage. The milk flow is not here used for rinsing a milk passage of milk residues from a previously milked animal. It is clearly described, for example in claim 9 of this reference, that the milk line, the by-pass line, the sample extracting means and a delivery device are cleaned with a cleaning liquid after the completion of a milking operation. Consequently, the milk passages of the apparatus seem to be cleaned between each milking operation by means of the supply of a cleaning medium. Furthermore, it is indicated, for example in claim 8, that a temporary airflow is used to clean a delivery device. As a result, cleaning methods are used in the WO 92/15196

Application No. 10/512,011

Title: A DEVICE AND A METHOD FOR SAMPLING OF MILK

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reference which have no similarities to the rinsing structure and process specified in the independent claims 1, 28 and 30 of the present application.

The foregoing reference is an example of the conventional reasoning of those skilled in the art teaching the use of water or another cleaning liquid for cleaning sampling equipment. This reference certainly does not show the feature of using a milk flow for rinsing a milk passage of the milk residues from a previously milked animal. On the contrary, this reference explicitly teaches the use of air or of a cleaning liquid to clean the equipment. Therefore, applying this reference in hindsight to the independent claims 1, 28 and 30 to assert a lack of novelty, or obviousness as a predicate to asserting lack of a common special technical feature, cannot be supported based on the reference itself. A withdrawal of the restriction requirement is consistent with the positive International Preliminary Examination Report which indicated this application to be allowable over the cited reference.

The Office Action also maintains that lack of unity of invention is presented by the assertion of claims 1-27, 29 drawn to a milk sampling device, and to claim 30 directed to a milking robot. However, a review of the Guidelines for Examination under the Patent Cooperation Treaty, Chapter 10, reveals that such common claims are entirely proper. Looking at Guideline paragraph 10.16 and the examples set forth in paragraph 10.28 and 10.29, both a milking robot including the device for sampling milk (as per claim 30) and the device for sampling milk *per se* of claim 1 are permitted in the same application. For example, if it is proper to consider a plug characterized by feature A, and a separate claim directed to a socket characterized by feature A, or to a transmitter provided with

Application No. 10/512,011

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a time axis expander for video signals along with a claim to a receiver provided with a time axis compressor for video signals received, then certainly it is proper to consider a milk sampling device as well as a milking robot including the milk sampling device sharing the feature regarding rinsing of the passage with milk at a time before a second sample is taken as set forth in claims 1 and 30. The Examination Guidelines certainly make clear that both claims 1 and 30 share unity of invention and may be considered in the same application.

Applicants have also made some grammatical changes to some of the claims, in some instances reintroducing the term "said" which were deleted by the preliminary amendment, or providing the definite article "the" to make the claims more readily readable and, it is hoped, in condition for allowance.

Thus, reconsideration of the restriction requirement for lack of unity and passage of the application to allowance is courteously requested. In view of the favorable International Preliminary Examination Report and the remarks set forth above, it is believed that this amendment places the application in condition for allowance and early issuance of the Notice of Allowance is courteously requested.

Application No. 10/512,011

Title: A DEVICE AND A METHOD FOR SAMPLING OF MILK

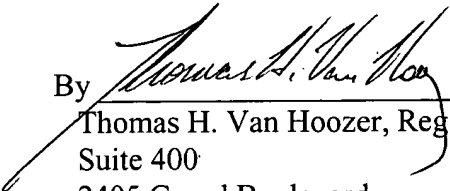
Response to Office Action dated June 8, 2006

Should the Examiner have any additional issues which may be resolved by a telephone conference, he may address them to the undersigned at 1-800-445-3460. Any additional fees necessitated by this submission may be charged to Deposit Account 19-0522.

Respectfully submitted,

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